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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,159	11/24/2003	Malvin A. Nezat II	NEZ005PU	1158
22948 7590 12/28/2006 MARSTELLER & ASSOCIATES P O BOX 803302 DALLAS, TX 75380-3302			EXAMINER HUSBAND, SARAH E	
			ART UNIT	PAPER NUMBER
			1746	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/28/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/707,159	NEZAT, MALVIN A.	
	Examiner	Art Unit	
	Sarah E. Husband	1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 6/12/2006 have been fully considered but they are not persuasive. Applicant's arguments are not persuasive because as previously described, it is common in the art to have nozzles and nozzle supports associated with these kiting mechanisms. Brown and Redmond disclose two examples of nozzles which are supported by a plate-like structure. Although Applicant suggests that the modification of Brown ('659) with Brown ('858) and Redmond would cause Brown ('659) to become too heavy and therefore would not operate properly, this argument is not persuasive. There is no evidence to suggest this would happen and as the nozzles and plate are present in other types of sewer cleaning apparatus, this would suggest that they actually would not cause this problem and would still allow the equipment to operate in a successful manner. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Therefore, the rejection is still deemed as proper.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 10, 11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US Patent No. 2,508,659) in view of Redmond (US Patent No. 2,481,152) or Creed (US Patent No. 5,868,858).

Brown discloses a cleaning device for interiors of pipes or sewers having a conically shaped member (15) with a first end and second end fitting inside a passageway (Fig. 1, 2), securing means in proximity with the first end (24, 19), an assembly of holes (plurality of nozzles) mounted to the second end which direct jets of water (Fig. 6, Item 17). Brown also discloses the conical member being made of a flexible material such as canvas which would be impervious to fluid flow (col. 2, ll. 10-15; Fig. 1, 2). And further, Brown discloses a substantially rigid frame (col. 3, ll. 3-9; Fig. 7, Item 14). Brown does not expressly disclose the nozzles extending from a plate. Redmond discloses a nozzle extending from a plate-like structure (Fig. 1, 3, Item 9) and Creed discloses a plurality of nozzles extending from a support structure (Fig. 7, Items 52B). The structures shown by Redmond and Creed are support structures for the nozzles and would be equivalent to the plate structure shown by Applicant and would not be patentably distinguishable from the prior art. Although Redmond discloses a single nozzle, it would be obvious to one of ordinary skill in the art to include multiple nozzles as shown by Brown, which are performing the same function and

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directing the fluid in the same manner as a single nozzle, and the Courts have upheld that the duplication of parts is obvious, *St. Regis Paper Co. v. Beemis Co. Inc.* 193 USPQ 8, 11 (1977); *In re Harza* 124 USPQ 378 (CCPA 1960). At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify Brown with Redmond or Creed for the benefit of additional nozzle support.

Claims 1-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Specification in view of Brown and further in view of Redmond.

Applicant describes in the specification Figures 3-5 which are shown as prior art (paragraphs 22-39). Applicant discusses that these prior art disclose a flexible conical shaped element with first and second ends, securing element, an end with a single nozzle (60), second truncated end, the second end having width less than the first end, and has a check valve made of rubber. The prior art described by Applicant's Specification does not disclose a plurality of nozzles nor nozzles extending from a plate. Brown discloses a sewer-cleaning nozzle with a plurality of nozzles (Fig. 2, 7, Item 17) and Redmond discloses the nozzle extending from a plate-like structure and a frusto-conical shape. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the prior art shown by Applicant with Brown and Redmond for the benefit of an efficient cleaning as a result of a stable nozzle structure having multiple nozzles. And further, the courts have ruled that the duplication of parts is obvious, *St. Regis Paper Co. v. Beemis Co. Inc.* 193 USPQ 8, 11 (1977).

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Claims 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Specification, Brown and Redmond as applied to claims 1-11 and 13-15 above, and further in view of Leitko (US Patent No. 5,875,803).

Applicant's prior art, Brown and Redmond disclose the apparatus shown above in the 103(a) rejection. They do not disclose nozzles which are pivotally mounted. Leitko discloses pivotally mounted nozzles which rotate about a central axis (Fig. 1-3; abstract). Applicant's prior art, Brown, Redmond and Leitko are analogous art because they are from the same field of endeavor, conduit cleaning apparatus. At the time of the invention, it would have been obvious to one of ordinary skill in the art to modify the Applicant's prior art, Brown, and Redmond with Leitko for the benefit of a more thorough cleaning of the inside of pipes or other conduits.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.

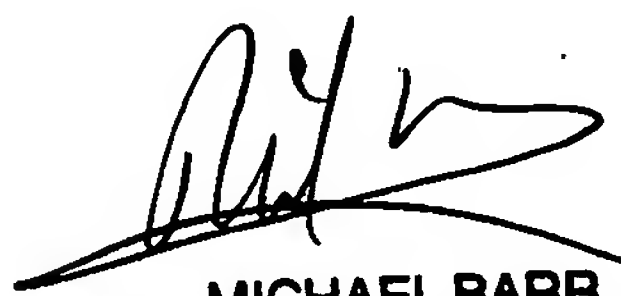
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In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah E. Husband whose telephone number is (571) 272-8387. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



MICHAEL BARR
SUPERVISORY PATENT EXAMINER

SEH